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TRANSCRIPT
OF
PROCEEDINGS
(Clark County Commissioners' meeting)
March 27, 2017
9:15 o'clock, a.m.

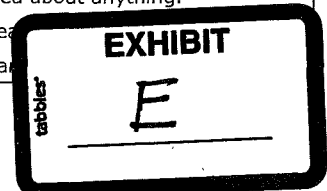
Commissioners Present:
Violet Wicks, Chairperson
Robert Bjerke, Vice Chairman
Francis Hass, Commissioner
Chris Sass, Commissioner
Richard Reints, Commissioner

Taken at:
Clark County Courthouse
200 North Commercial
Clark, South Dakota

1 people out there. You all are paying the price. Your
2 community's not going the right direction.
3 So if Geronimo would like to comment, but I
4 believe you've been asked twice if you consider it a conflict
5 of interest and I believe the answer is no. If you want to
6 comment, fine. If not, I guess that's really all I have to
7 say at this time.
8 JAY HESSE: And for me, I've never -- I mean,
9 from the social media avenue, I didn't play into that. I
10 mean, we're just going through the process here and I make no
11 accusation that you're being --
12 COMMISSIONER BJERKE: No, no, no, nothing to do
13 with your folks.
14 JAY HESSE: Yeah.
15 COMMISSIONER BJERKE: But I guess just at this
16 point in time I would like to find out, because if there's --
17 if this stuff is going to come up after we get done here
18 which or the way we vote, I'd rather talk about it now, and I
19 wish a lot of these would have got addressed that way, talked
20 about upfront instead of after the fact, so if something's
21 going to come up because we voted one way or the other, I'd
22 rather talk about it right now, and I'm only talking for
23 myself. The other boards didn't even know I was going to
24 talk. It was just something I have to get off my chest
25 because a lot of it's pointed at myself, so...

1 COMMISSIONER BJERKE: May I address.
2 CHAIRPERSON WICKS: Yes, you may.
3 COMMISSIONER BJERKE: I guess my thoughts -- I
4 don't have everything written down, but the whole room is
5 filled with emotion. I'm not going to go on, I just
6 basically want to talk about the social media for about ten
7 seconds and then I'm going to get off that because there's so
8 much emotion in this community and right now social media is
9 not making it any better, particularly Facebook, comments
10 that are made on Facebook. Either side, it doesn't matter.
11 We don't need to fuel the fire out there, and I guess when
12 social media talks about me as a commissioner and my
13 integrity, it's a problem.
14 So I want to address that issue today. I've
15 heard there's conflict of interest with myself and other
16 commissioners and I'm going to ask Geronimo, if they don't
17 want to comment, that's fine, but I believe they've been
18 asked twice if they feel like there's a conflict of interest
19 with myself and other commissioners on being unbiased. If
20 there is, I would ask for you to bring it up at this time so
21 we can just go on, because one thing I don't want to hear
22 from anyone when this is done is the fact that somebody did
23 or did not get something because I'm a better friend, because
24 you're a relative or whatever else. I don't want that. The
25 community doesn't want it. I'm not paying the price for the

1 JAY HESSE: I've got no issues.
2 CHAIRPERSON WICKS: Thank you.
3 JAY HESSE: No comment, I guess.
4 COMMISSIONER BJERKE: Thank you.
5 CHAD FJELLAND: The current motion on the table
6 is a motion to approve. At this time, is there any other
7 debate or discussion on that motion? There being discussion
8 amongst the commissioners, ultimately the commissioners can
9 ask questions this morning of the applicant.
10 COMMISSIONER HASS: Geronimo, with the mile
11 setback with the option of negotiating the nonparticipants,
12 do you have a problem with that or --
13 PATRICK SMITH: Yeah, we've negotiated with a lot
14 of these folks, put fair offers in front of them. You know,
15 we came to the boundary that we have here because of those
16 negotiations.
17 COMMISSIONER HASS: I'm talking about
18 nonparticipants.
19 PATRICK SMITH: We've approached all those folks,
20 or almost all those folks with opportunities to participate
21 in the project.
22 UNIDENTIFIED MAN: I don't think that's true
23 because I haven't been approached about anything.
24 JAY HESSE: I think, yeah
25 approached with the offers, I mean



1 terminology, but that's the same way. It's going to
2 disappear.

3 PATRICK SMITH: Yeah, we'll follow up and get you
4 guys some more information on that because we want to make
5 sure that that's processed right because I think that's
6 really important.

7 COMMISSIONER BJERKE: It's important to us, but
8 it's also important to everyone out here.

9 PATRICK SMITH: Yeah.

10 COMMISSIONER REINTS: Anybody from Geronimo
11 mention the one-mile setback is going to be too much to make
12 the project viable, and I realize you've already widened it
13 to 2,000 feet for the nonparticipating houses. What are you
14 comfortable with? Some place between that or --

15 PATRICK SMITH: We spent a lot of time talking
16 about what to do, how to make this work because we wanted to
17 be fair to concerns. We wanted to make sure that the board
18 knew that we were hearing those concerns, and you know, I
19 think 2,000 feet is about what we can do. You know, I'm
20 happy to provide an offer to folks again one last time and
21 put it on the table. I don't see that being an issue, but
22 we've made a lot of offers here and you know, you guys
23 haven't necessarily seen all of it and it may not be
24 represented to you that we made offers, but we really did.

25 UNIDENTIFIED MAN: Could you be specific, who did

1 county and in this area, a lot of the basis for the
2 regulations that the northeast part of the state have,
3 started with, well, initially regulations that were drafted
4 in the late '90s, early 2000s and then implemented in
5 Brookings County. They had worked on theirs and then once
6 they had their first wind projects in the early 2000s, a lot
7 of counties went through and adopted similar language,
8 especially after the state PUC adopted a model ordinance that
9 was, frankly, very similar to Brookings County, and so that's
10 where you saw a lot of counties going to that, and now
11 definitely over the last few years there's been a lot more
12 talk about going back to wider on participating versus
13 nonparticipating, but that's where those came from at the
14 time. It came from just the practical application in
15 Brookings County. The issues that they had had at that point
16 in their initial ones revolved more around the actual
17 construction of them when they went on and that's where
18 counties started to add more specifics on haul road
19 agreements, importance with that because that was where they
20 ran into the most trouble, and down there, the most recent
21 application they had was a few months ago, there were two
22 people there to address the board about it. And so from that
23 standpoint, I'm not saying you have to be Brookings County, I
24 don't want to go down that road, but the point is that's
25 where they came from, is where those regulations came from is

1 you make offers to?

2 PATRICK SMITH: You know, I'm not going to be
3 specific here to be honest because that is -- that's an issue
4 between us and the landowners and --

5 UNIDENTIFIED MAN: The nonparticipants?

6 PATRICK SMITH: Either, yep.

7 UNIDENTIFIED MAN: I'm not aware of any, not one.

8 PATRICK SMITH: And I guess that -- so to
9 alleviate concerns that these folks might not have gotten
10 offers, we'll sit down and we'll take a look and we'll make
11 one last offer to the folks that we talked to already that
12 we're hearing concerns from and put it on the table, and if
13 they choose to take it, you know, we'd be more than happy to
14 have them receive some of the revenue from the project,
15 participate in some way.

16 UNIDENTIFIED MAN: Well, I did some research on
17 the setbacks and the only place that they can figure out that
18 the 1,000-foot setback come from was from wind tower
19 themselves is where that came from and everybody just kind of
20 adopted it, and independent studies that are being done
21 around the country, more of them are going to a half a mile
22 to two miles from independent studies, and that's all I have
23 to say about research that I've done.

24 LUKE MULLER: Would you like me to answer
25 anything to it? What will end up happening as far as this

1 just practical application. And I also don't want to make
2 the point that they have to stay the same forever either
3 because they don't either.

4 COMMISSIONER BJERKE: A question to Geronimo
5 Energy. We've gotten some letters, phones calls from US
6 Fish & Wildlife, South Dakota Game Fish & Parks, can you tell
7 me how that -- I know they've both said that there needs to
8 be like a two year, I want to say study done on impact.
9 Impact study, I believe. Has any of that started, or are you
10 waiting from us before that can start? Can you tell me how
11 that works, please?

12 MELISSA SCHMIT: Yeah, I can speak to that. So
13 we have been conducting environmental surveys for part of
14 that process since last spring. We started in March, April,
15 I believe. So we have just completed our first year and we
16 are working on our second year. So we have been actively
17 coordinating with them. We've been out to several meetings
18 in Pierre, lots of conference calls for approval on our
19 survey protocol for those various species of concern, so it
20 is ongoing. So we're about a year into it as far as data
21 collection goes.

22 COMMISSIONER BJERKE: So that is an impact study?
23 You say survey. Can you tell me what you mean by survey?

24 MELISSA SCHMIT: Right, so we survey species of
25 concern, so we're looking for eagles, golden eagles, bald

1 eagles, looking for certain species of butterfly that are
 2 found in the area, looking for grassland birds and grouse
 3 leks which is like the mating grounds for grassland birds.
 4 We do migratory birds, bat species, various bat species doing
 5 a -- setting up microphones to listen for -- you know,
 6 identify the specific bat species that are within the project
 7 area. Am I missing any? And then additionally we do a
 8 cultural resource survey as well and a wetland delineation on
 9 top of all the species specific surveys.

10 COMMISSIONER BJERKE: And you say you're about a
 11 year into both of those, is that correct?

12 MELISSA SCHMIT: Yeah, so we have a year of
 13 migratory bird/bat surveys under our belt, yes.

14 COMMISSIONER BJERKE: And once those are
 15 completed when the two-year window is done, then those
 16 results go back to US Fish & Wildlife and Game, Fish & Parks
 17 and then they either sign off or reject, is that correct.

18 MELISSA SCHMIT: Yep, so we work with them on the
 19 development. It's called an environmental assessment, an EA,
 20 so it's a really detailed environmental impact report, and in
 21 addition to presenting our full data, then we'll also
 22 discuss, you know, mitigation and different measures that
 23 we'll talk if we do have, you know, risk for a certain
 24 species, and yes, and then at that point, you know, there's a
 25 public comment period, which I think I outlined a little bit

1 in our hearing a few weeks ago, so there's going to be an
 2 opportunity for the public to comment on that. There's going
 3 to be tribal input as well for cultural resources, and then
 4 yes, then the Fish & Wildlife Service would ultimately
 5 release a finding of no impact, which would be ultimately
 6 approval, and then the end result of that, again, would be
 7 tied back to the grassland easements that are located in the
 8 project area allowing us to construct facilities on those
 9 grassland easements.

10 COMMISSIONER BJERKE: I'm sorry I'm asking so
 11 many questions, but I've had a few weeks to compile some
 12 stuff and there's a lot of questions I should have asked at
 13 the hearing, but I wasn't aware of it. I apologize that I'm
 14 doing most of the talking, but I guess whatever, we've all
 15 done a lot of homework, so -- and I need to feel comfortable
 16 about this whole thing. So once the US Fish & Wildlife and
 17 Game Fish would finish all that, does that -- how does the
 18 State PUC permit involve that process, if at all, or doesn't
 19 their approval have anything to do with US Fish & Wildlife or
 20 any of those type of -- that's a separate --

21 MELISSA SCHMIT: It's separate. So I mean, we
 22 would be planning to go to the state shortly after we have
 23 worked through the local CUP permitting process, and so as
 24 far as our coordination with those wildlife agencies goes,
 25 it's going to be very similar to what we presented in the CUP

1 to the county. So evidence of, you know, consultation with
 2 them, that we're working with them, that we're doing our due
 3 diligence, we're doing our surveys, you know, what we need to
 4 be doing and that they're ongoing, and there will be a
 5 discussion in the facility permit with the state as to, you
 6 know, the surveys that we've completed so far. You know,
 7 we'll have a bunch of appendices in the back that are going
 8 to actually have our reports from our third-party consultants
 9 on our various surveys that we've completed so far. So it's
 10 going to be analysis of the environmental impact, but not as
 11 detailed as the formal process I just described with the Fish
 12 & Wildlife Service.

13 COMMISSIONER BJERKE: Okay. Thank you.

14 COMMISSIONER HASS: I guess I don't understand,
 15 why couldn't you, if there's a little distance, can't you
 16 just move it, you know, so we can both win on this, or for
 17 both people to win on this? Can't you just move it wherever
 18 you have to, a little ways here? There's what, 31,000 acres,
 19 isn't there room to move them a little bit so we all can be
 20 happy, or hopefully halfway happy?

21 PATRICK SMITH: I think that's what we tried to
 22 put on the table here is halfway happy. There's a lot of
 23 constraints on the site besides just homes.

24 COMMISSIONER HASS: Yeah, I suppose.

25 PATRICK SMITH: And there's hills and we were

1 actually running into engineering problems getting up some of
 2 the hills so we had to move turbine positions because of
 3 that. You know, there's a whole lot that goes into the
 4 design of the project. So we really -- we feel we are -- you
 5 know, this proposal here that we've put together is, you
 6 know, what we feel competent we can achieve and still make
 7 the project work, so I think it is a halfway happy spot. I
 8 know that it doesn't feel like it necessarily, but we're --
 9 we do think it's a halfway happy spot. We've tried to
 10 accommodate as many people as we could.

11 COMMISSIONER SASS: You guys are looking at
 12 400 megawatts apparently is what you're looking for. With
 13 219 towers, you know, there's minimum -- from what I
 14 understand, the minimum size is going to be a two megawatt
 15 and you could go up to a what?

16 PATRICK SMITH: Up to like a three,
 17 three-megawatt turbine, and we fully expect to lose
 18 positions. You know, we already lost some here in what we're
 19 revising, providing in that letter, but we're expecting to
 20 lose positions in the state process and in working with the
 21 Fish & Wildlife Service and finishing up our surveys because,
 22 you know, we take all those things, all of the things that
 23 come out of those processes into account. So if there's new
 24 information that comes up environmentally in the state
 25 process, you know, and environmentally, you know, it's human

1 and natural environment. It's not -- when I say that, don't
 2 think I'm ignoring the human part of it, that's really
 3 important to us. But there's other things that come up
 4 environmentally in those two things and those two processes
 5 that will cause us to change, lose positions, and we'll come
 6 up with a layout. We're going to go out, do geotechnical
 7 evaluations. We look down, you know, 50, 60 feet under the
 8 ground to make sure that there's -- structurally the turbines
 9 are going to be good for 20, 30 years and we lose positions
 10 in that process too. So ultimately we'll see -- you know,
 11 this project will probably, from what I've seen on how we
 12 lose positions on projects, this project will probably just
 13 barely get enough positions to get everything that we think
 14 we need.

15 COMMISSIONER SASS: I guess I look at it if you
 16 were able to put in a three megawatt, that would solve a lot
 17 of tower issues to me as far as the amount of them.

18 PATRICK SMITH: Yeah, that's a market issue. We
 19 don't -- you know, it's kind of what's available. We've run
 20 into a number of times where one manufacturer just doesn't
 21 have the ability to turn out what they -- you know, so we
 22 don't know what turbines we're going to install, and it's all
 23 out in the -- you know, what the market is for turbines.

24 COMMISSIONER SASS: As far as maintenance down
 25 the road, I mean I've drove north up into the Day County

1 farm. There's 66 of them up there. I understand there's --
 2 right now they've got some issues with a few of them right
 3 now, and in fact, if you drive around and you can see oil
 4 coming down from them. I've heard the plan is if they get
 5 bad enough, they're going to get shut off because I know it
 6 costs quite a bit of money to fix those. I can imagine if
 7 you're looking at a \$3 million tower, or whatever they cost
 8 to put up, what's the plan with that? I mean, and I know
 9 it's a maintenance schedule, but I mean, you go up there
 10 right now and you can see oil coming down from them and
 11 they're seven years old, I think. What's the plan for
 12 maintenance on them?

13 PATRICK SMITH: You know, we'll have a
 14 comprehensive warranty from the manufacturer. I don't know
 15 if it's going to be a 5- or a 10-year warranty right now, but
 16 we'll have a long -- you know, a long-term warranty, plus the
 17 manufacturer will be providing staff to maintain them as well
 18 as we will be providing staff to maintain them. I don't know
 19 the particulars of what's happening up in Day County, but you
 20 know, all of the projects that we built, we've got two
 21 projects that are just hitting the 10-year mark. We've had
 22 maintenance issues on them. In fact, we've changed out
 23 blades entirely on those, but you know, we've never had a
 24 problem, and we had a project that's about 5 years old that
 25 we built that is operating just fine. We haven't had any

1 problems with oil down the towers. So I think it sometimes
 2 is just unique to whatever is out there and whatever that
 3 company, that particular company arranges, but one of the
 4 long-term maintenance contract with the turbine manufacturer
 5 revolves on warranties from them, so it should prevent any
 6 issues along those points, and everything that we're looking
 7 at -- you know, and for us to get a project done, for anybody
 8 to get a project done, they need to be well-heeled companies,
 9 you know, GE, Siemens, a Dutch company called Vestas that's
 10 really well-known.

11 UNIDENTIFIED MAN: I just want to make a comment
 12 on what you're just talking about.

13 COMMISSIONER SASS: Is it all right, or is it
 14 public? We probably got too far into --

15 LUKE MULLER: Going with -- it's basically
 16 anything you ask a question. If you've got a question for
 17 someone, you can ask a question.

18 CHAIRPERSON WICKS: Okay. Dave, do you have a
 19 question?

20 COMMISSIONER SASS: Do you have a question, Dave?

21 DAVE: Yeah, you're talking about the -- if the
 22 one that's leaking oil, if they were going to take it down,
 23 one of the 66 that are up, and I realize it's a different
 24 project, but hypothetically if one were to happen here, who's
 25 going to pay to take that tower down if it needs to be

1 decommissioned?

2 COMMISSIONER SASS: That was kind of my question
 3 too, I guess. You know, I know there's warranty on them.

4 PATRICK SMITH: Yeah, and I think we've provided
 5 some information on how we set up decommissioning plans in
 6 that letter. You know, that will be the same here. There
 7 will be financial assurances to take care of that stuff and
 8 there will be a timeline to remove.

9 DAVE: That was just the cost of what it cost.
 10 Who pays for that?

11 PATRICK SMITH: Yeah, I think that's what I was
 12 saying is we'll provide financial assurances and --

13 DAVE: Do you have any place?

14 PATRICK SMITH: At this very moment?

15 DAVE: Right.

16 PATRICK SMITH: We're not seeking a building
 17 permit, so no.

18 DAVE: Okay. Will there be a bond or anything
 19 like that?

20 PATRICK SMITH: Yes.

21 UNIDENTIFIED MAN: There will be, is that right?

22 PATRICK SMITH: Yep.

23 JARVIS REIDBURN: Barry, when we visited Monday,
 24 I was wondering if you could give a little bit of an insight
 25 to the board when you talked about the involvement of PUC,